

91-1041

SUPREME COURT, U.S.

FILED

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No. \_\_\_\_\_

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1991

GREGORIO D. TAITAGUE and HENRY BLAS,  
*Petitioners,*

v.

FIRST ISLAND INDUSTRY, INC., a Guam Corporation;  
CALVO'S INSURANCE UNDERWRITERS, INC.,  
a Guam Corporation;

OXFORD PROPERTIES and FINANCE, LTD.,  
a Hong Kong Corporation;

The Estate of MARIA TORRES MARTINEZ Deceased,  
by Father VICENTE T. MARTINEZ, Administrator;

and all other persons unknown

(DOES I through V) claiming any right, title, estate,  
lien or interest in the real property described  
in the complaint adverse to Respondents' ownership,  
or any cloud upon Respondents' title thereto,

COUNTY OF LOS ANGELES,

*Respondents.*

### PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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*Counsel for Petitioners*

December 20, 1991



## QUESTIONS PRESENTED

1. Whether a judgment which is void because it was rendered without service of process ever being made upon a party may be used to deprive that party of substantial property rights?
  2. Whether a limitation statute may require one in undisturbed possession of real property to bring an action within a specified period of time or thereby be deemed to have forfeited that property?
  3. When a river constitutes a boundary between two lots and where in the registration of one of the lots the course of the river is incorrectly depicted whether the boundary for the lots thereafter is this river in its de facto location or the erroneous registered depiction thereof?
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(DOES I through V) claiming any right, title, estate,  
lien or interest in the real property described  
in the complaint adverse to Respondents' ownership,  
or any cloud upon Respondents' title thereto,  
*Respondents.*

### **PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

Petitioners Gregorio D. Taitague and Henry Blas Blas respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on September 3, 1991.

## **OPINIONS BELOW**

The opinion of the Court of Appeals for the Ninth Circuit has not been reported. It is reprinted in the appendix hereto, p. A-1.

The opinion of the District Court of Guam, Appellate Division has not been reported. It is reprinted in the appendix hereto, p. B-1.

The decision of the Superior Court of Guam has not been reported. It is reprinted in the appendix hereto, p. C-1.

## **JURISDICTION**

The Superior Court of Guam issued its Decision and Order on May 25, 1988 dismissing Petitioners' complaint. The trial court denied a timely motion for additional findings and to amend findings on July 12, 1988. On January 28, 1990, the District Court of Guam Appellate Division, affirmed the trial court's decision. On September 3, 1991 the Ninth Circuit Court of Appeals affirmed the Appellate Division. The Court of Appeals denied a timely petition for rehearing on September 26, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL PROVISION AND STATUTES INVOLVED**

Fourteenth Amendment, United States Constitution, § 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## 48 USC § 1421b. Organic Act of Guam

...

(e) No person shall be deprived of life, liberty, or property without due process of law.

...

(u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

## Civil Code of Guam

§ 1157.44. Limitation of action relating to land. No person shall commence any action at law or in equity for the recovery of land, or assert any interest or right in or lien or demand upon the same, or make entry thereon adversely to the title of interest certified in the certificate of title bringing the land under the operation of this Act after one (1) year following the first registration, providing said first registration is not void for any of the reasons set forth in § 37 of this Act. It shall not be an exception to this rule that the person entitled to bring the action or make the entry is deceased, an infant, lunatic, or is under any disability, but action may be brought by such person by his next friend or guardian or by the administrator or the executor of a deceased person. It shall be the duty of the guardian, if there is any, to bring action in the name of his ward whenever it is necessary to preserve or enforce the ward's rights in registered land; provided, however, before such action shall proceed, it must be made to appear to the court that the person bringing such action or those under whom he claims, had not actual notice of the proceedings to register such lands in time to appear

and file his objections or assert his claim. The provisions of this section shall in no way affect or disturb the rights of any person in said land acquired subsequent to the registration thereof, bona fide and without knowledge and for a valuable consideration.

§ 1157.37. Effect of registration where deed void or executed by person under disability. If a deed or other instrument is registered, which is forged, or executed by a person under legal disability, such registration shall be void; provided, that the title of a registered owner, who has taken bona fide for a valuable consideration, shall not be affected by reason of his claiming title through someone, the registration of whose right or interest was void, as provided in this section.

### STATEMENT OF THE CASE

Petitioners' predecessor in interest Baldovino Taitague (hereafter Taitague)<sup>1</sup> initiated this action in the Superior Court of Guam on February 23, 1979 to quiet title to a portion of property he had owned and lived on since at least the 1930's. The portion of his land which he sought to quiet title to was that which was bounded by a river (the Ugum River) which had served as the boundary between his property and Respondents' property.

In 1964 predecessors to Respondent Martinez, Pedro and Maria Martinez (hereinafter Martinez), filed an action under Guam's Land Title Registration Act to have their property registered. This statute required that inter alia the petition seeking to register property identify the names of all adjacent land owners to that property and to personally serve all such land owners with a copy of the petition. Taitague, although unquestionably an adjacent land owner, was not designated as such by Martinez in their registration petition, nor was he personally served with a

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<sup>1</sup>Baldovino Taitague was the original petitioner while this matter was still before the trial court. Gregorio Taitague and Henry Blas Blas, Baldovino's son and grandson and successors in interest to the Taitague property were substituted as plaintiffs.

copy of that petition. The decree registering Martinez' property was entered in 1964. The property map registered by Martinez identified the Ugum river as their northern boundary. However that map depicted the course of that river as traversing over a portion of Taitague's property such as to deprive Taitague of approximately 64,000 square meters of property. This was the property for which Taitague initiated this action to quiet title: that is that portion of his property between the actual location of the river and the erroneous depiction of same. Respondents raised as an affirmative defense to this quiet title action the fact that the subject property had been registered and they were subsequent innocent purchasers for value of same and were therefore protected by relevant portions of the registration statute.

The Superior Court of Guam after trial summarized the facts of that matter as follows (see pp. C-2, 3, *infra*):

This boundary dispute has as its origin Land Registration Case No. 32-64 (of which the Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as Estate 16 Lot "B" Dandan, Municipality of Inarajan, Territory of Guam. [In that action, the petitioners] did not list in their petition [nor] personally serve the plaintiffs' predecessor in interest, Baldovino Babauta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1157.4 and 1157.11. (Land Title Registration Act). Further, [the 1964 Untalan] survey map relied upon in Land Registration Case No. 32-64 incorrectly depicted the course of the Ugum River which had traditionally established the boundary between the Taitague and Martinez properties. [The disputed property in which the plaintiffs seek to quiet title is thus a portion of what had traditionally been considered the Taitague family estate lying just north of the Ugum River in the municipality of Talofofo. T]he largely uncontradicted testimony put forth by plaintiffs establishes that they have been in possession of the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had

never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle . . .

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd. sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc., transferred its interest to Oxford Properties and Finance Ltd. [All transfers of the Martinez property were made to bona fide purchasers and for value.] Each of the above grantees received a new Certificate of Title upon purchase of their respective interest. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs premise their present suit, was canceled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation. (Bracketed alterations supplied by appellate division decision at B-2, 3)

This recitation of facts was adopted and provided verbatim in the decisions of the District Court of Guam, Appellate Division and the Ninth Circuit. (See B-2, 3 and A-3, 4)

The Superior Court of Guam dismissed Petitioner's complaint holding as follows (see p. C-4, *infra*):

Because the present case involves subsequent innocent purchasers for value, *Follette* will not be applied to permit "reopening of the question of the validity of the registration." Accordingly, the Certificate of Title currently possessed by defendants Calvo's Insurance Underwriters, Inc., and Oxford Properties and Finance, Ltd., is held to be immune from the claims the Taitagues are prosecuting herein. The above constitutes findings of fact and conclusions of law as required by Rule 52(a) of the Guam Rules of Civil Procedure.

The Appellate Division affirmed the Superior Court's decision concurring that subsequent innocent purchasers for value precluded Petitioners' right to challenge the defective registration

even though Taitague had never been served with process in the original registration proceeding.

The Ninth Circuit affirmed the Appellate Division relying upon an "alternative legal basis" and held that Petitioners' claim was "time barred". Specifically, it held that Guam Civil Code § 1157.44 provided for a one year period in which to challenge a defective registration except where that registration was void for specified reasons. If the registration was void for one of the specified reasons then there would be no time limitation in which to challenge that registration. However it further held that this statute did not designate the failure to serve the statutorily required process as a recognized grounds to render the judgment of registration void. Therefore it concluded that Taitague was required to have challenged that judgment within one year of its rendition and having failed to do so his quiet title action was time barred.

## REASONS FOR GRANTING THE WRIT

### I

#### THE NINTH CIRCUIT'S DECISION DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT.

The Ninth Circuit has directly violated in principle the holdings of this Court in *Hollingsworth v. Barbour, et al.*, 4 Pet. 466, 29 U.S. 922, (1830); *Penoyer v. Neff*, 5 Otto (95 US) 714, (1877); *Shephard v. Pepper*, 133 U.S. 626, (1890); *Shaffer v. Heitner*, 433 U.S. 186, (1977); *Armstrong v. Manzo*, 380 U.S. 545, (1965) and their progeny. It did so by holding that a judgment entered without a statutorily required summons ever having been issued to Petitioners' predecessor in interest or served upon him could be used to deprive him and thus them of their title to a substantial amount of real property. In reaching this conclusion, the Ninth Circuit held as follows (see p. A-7, *infra*):

Taitague and Blas argue that the one-year statute of limitations set forth in the Act does not apply because the failure of defendants' predecessor in interest to serve notice on Baldovino Taitague in the original registration proceeding

rendered the registration void. However, the Act does not specify that mistake in description or failure to provide notice to an adjacent land owner are bases for voiding a registration. One provision of the Act preserves the rights and remedies of a *defrauded* party, but even that provision also notes that an action for fraud cannot "affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him." Guam Civ. Code § 1157.36 (21 Guam Code Ann. § 29138). *Nothing in the Act authorizes a party who did not receive the required notice at the time of original registration, such as Taitague, to bring an action against a subsequent good faith purchaser to void the registration. More importantly, the statute of limitations does not contain any exception for such an action.* (Emphasis added)<sup>2</sup>

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<sup>2</sup>Curiously, the Ninth Circuit's holding was alleged to have been based on an "alternative legal basis" to that relied upon by the trial court and the intermediate appellate court. Both of those courts held that Petitioner's rights had been cut off by the rights of intervening bona fide purchasers for value. This conclusion was in direct conflict with the dispositive authority on this issue under local Guam law. Specifically, the Supreme Court of California's, *Follette v. Pacific Light & Power Corp.*, 189 Cal. 193, 208 P. 295 (1922) decision. This decision is dispositive under Guam law because the subject land registration statute was adopted verbatim from California circa 1933. By operation of the Ninth Circuit's *Roberto v. Aguon*, 519 F.2d 754 (9th Cir., 1975), decision, statutes adopted from California by Guam are deemed to have been adopted as construed by the highest court of that state. In *Follette, supra*, the Supreme Court of California considered the issue of whether the rights of a subsequent bona fide purchaser of registered land cut off those of an affected land owner statutorily entitled to receive service of process but who had never been personally served in the original registration action. That court held that notice and opportunity to be heard is so fundamental to our concept of justice, tracing its origins back to the Magna Carta, that subsequent bona fide purchasers to registered property did not terminate the ability of effected land owners to challenge defective registrations where they had not properly been made parties by service of process in the original proceedings.



The holding of *Hollingsworth, supra*, *Penoyer, supra*, *Shepherd, supra* and *Shaffer, supra*, *Armstrong, supra*, and their progeny all stand for the axiomatic principle of constitutional law that a judgment entered without furnishing a party with the statutorily required service of process is void and that no effect may be given to such a judgment. In contravention of this principle, the Ninth Circuit held that because Guam's land registration limitation statute did not expressly exclude from its operation a judgment which was void for want of service of process that such a judgment was valid thereby rendering operational a one year limitation period within which to challenge that judgment. In short, the Ninth Circuit held that a judgment which was void for having failed to meet constitutionally mandated due process requirements was not void because it did not meet the local statute's definition of a void judgment!

Furthermore this decision unconstitutionally purports to allow such a void judgment to effect or impair rights. This it accomplished by burdening a party against whom a void judgment has been entered with the obligation to initiate an action at law or equity to set aside that judgment within one year of the entry of same or be precluded from challenging that Judgment. A party would apparently have that burden—where, as here, he never received any knowledge within this year period of the fact that he had been disenfranchised by a void Judgment!<sup>3</sup> Furthermore this

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The term "curious" is used in this context because the limitation statute relied upon by the Ninth Circuit (G.C.C. § 1157.44) literally applied has the same effect as the two lower courts' holding. This is so because the literal interpretation of this statute in the portion of the decision above provided and emphasized is that the one year limitation period is terminated if the rights of an innocent bona fide purchaser intervened. Therefore, it is "curious" that this alternative basis for its holding was deemed necessary to be used when it indicated that the original basis used by the lower courts was not constitutionally deficient and would have effected the identical result.

<sup>3</sup>The subject statute does not literally allow for the application of the equitable tolling doctrine. However the Ninth Circuit indicates in dicta that the equitable tolling doctrine could be applied to this statute. However even if this statute were to be so construed this would not

limitation statute by requiring the party against whom the void judgment has been entered to file a separate action in law or equity effectively shifts to that party both the burden of proof and persuasion which is also constitutionally impermissible. *See, Armstrong v. Manzo, supra.*

An alternative defect of this decision is that it purports to permit a limitation statute to compel a resort to legal proceedings by one who is in complete enjoyment of all he claims. Specifically, limitation statutes may not require one in undisturbed possession of real property to bring an action within a specified period of time or thereby be deemed to have forfeited that property. *See, Konantz v. Stein*, 283 Min. 33, 167 NW2d 1, (1969); *Burton v. Martin Oil Service Inc.*, 295 F.2d 679, (1961); *Kupka v. Reid*, 50 Wa.2d 465, 312 P.2d 1056, (1957); *Murrison v. Fenstermacher*, 166 Kan. 568, 203 P.2d 160, (1949); *Tannhauser v. Adams*, 31 C.2d 169, 187 P.2d 716, (1947); *Buty v. Goldfinch*, 74 Wash. 532, 133 P. 1057, (1913); *State, ex rel Douglas v. Westfall*, 85 Minn. 437, 89 NW 175, (1902); *People, ex rel Deneen v. Simon*, 176 Ill. 165, 52 NE 910, (1898); *Groesbeck v. Seeley*, 13 Mich. 329, (1865); 51 AmJur2d *Limitations of Actions* § 30; 61 *Corpus Juris Taxation* § 2031; 85 *Corpus Juris Secundum Taxation* § 984(d); 7 ALR2d 1366-1373 *Constitutionality of Statute Which Regardless of Possession of the Owner Reduces Title to Real Estate to a Mere Right of Action to be Asserted Within a Prescribed Period of Time*; 2 Cooley, *Constitutional Limitations* (8th ed. 1927) 762-763.<sup>4</sup>

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improve the constitutional vitality of this decision since it would be attempting to supplant the statutory required personal notice with "extra-official or casual notice". *See, Coe v. Armour Fertilizer Works*, 237 U.S. 413, (1914).

<sup>4</sup>This Court has visited this issue only once in *Lettingwall v. Warren* 2 Black 599, 17 L. Ed. 261 (1862) and upheld a Wisconsin decision containing a statute which directly contradicted this principle. *See, Hill v. Kracka*, 11 Wis 447 (1860). However it must be noted that both of these decisions were rendered before the adoption of the 14th Amendment.



## II

**THE NINTH CIRCUIT'S DECISION IS EXTREMELY IMPORTANT TO ALL RESIDENTS AND PARTICULARLY UNREGISTERED LAND OWNERS IN THE TERRITORY OF GUAM.**

This Ninth Circuit decision has inherent significance requiring its reversal in that it countenances a most flagrant and egregious deprivation of constitutional rights in direct contravention of numerous and unequivocal pronouncements of this Court. Furthermore, this decision, because it countenances this extreme sort of deprivation, places in jeopardy all rights of landowners of unregistered property in the Territory of Guam or subjects them to excessive burdens. This conclusion follows from the fact that this decision permits property to be registered without the giving of statutorily required notice to effected land owners. Therefore, any and all owners of unregistered land in the Territory of Guam are at risk of having their property registered to another without being made a party to that action. In essence, all owners of unregistered land are at risk of having their property taken from them through the auspices of a judicial proceeding in which they would not participate. Their only remedy would be to file an action at law or equity to challenge this taking within one year of this judgment arguably only so long as the rights of a subsequent bona fide purchaser had not intervened<sup>5</sup>. This would be the case even where they remained in full possession and enjoyment of their property. This decision therefore could have an extremely disturbing effect on the Territory's land tenure system in that it would likely depreciate the value of all unregistered lands as well as sound the bell for the commencement of a rush to the courthouse by every sort of unscrupulous person to seek to effect a judicially aided theft of land.

Lastly, this decision could effect similar results in other jurisdictions which have adopted a Land Title Registration Act

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<sup>5</sup>.Although the Ninth Circuit did not address this issue it indicated in the text of its decision reprinted and highlighted herein at pp. 7, 8 that the right to challenge such a void registration within the one year period would be terminated by a subsequent bona fide purchaser.

containing a limitation section similar to that found in Guam's. Immediately it could effect any other jurisdiction within the Ninth Circuit which have adopted such a statute containing a similar limitation section.

### III

#### **PROPER RESOLUTION OF LOCAL LAW ISSUE ELIMINATES NEED TO ADDRESS CONSTITUTIONAL ISSUES.**

It is submitted that an appropriate ruling on an issue controlled exclusively by local law eliminates the need to resolve the constitutional issues herein presented. *Communist Party of the United States v. Subversive Activities Control Board*, 351 U.S. 115, (1956); *Railroad Com. of Texas v. Pullman Co.*, 312 U.S. 496, (1941).

The trial court found and all appellate courts thereafter affirmed that the traditional boundary between the petitioners and respondents' property was the Ugum River. The controversy arose because in the initial registration the meander line depicting the course of that river was inaccurate. It is submitted that under local statutory law the boundary would still remain the river in its de facto location and not the meander line inaccurately depicting the course of that river.

Guam Civil Code § 830 provides as follows:

Section 830. Boundaries by water. Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tide water, takes to ordinary high water mark; when it borders upon a navigable stream, where there is no tide, the owner takes to the edge of the stream, at low water mark; when it borders upon any other water, the owner takes to the middle of the stream.

This statute establishes that the boundary of real property when it is bordered by a waterway is the waterway itself.

It is a well established principle of the law of boundaries that where there is a disparity between the numerical designation of the location of a natural monument and the monument itself, the

monument controls. *County of St. Clair v. Lovington*, 90 U.S. 59, 23 Wall 46 (1874); *Freeman v. Bellegardi*, 108 Cal.179, 41 P. 289 (1898); *Heckman v. Swett*, 99 Cal. 303, 33 P. 1099 (1893); *Martin v. Cooper*, 87 Cal. 97, 25 P. 262 (1890).

### CONCLUSION

For the above-specified reasons it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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December 20, 1991



A-1

**Appendix A**

Not For Publication

United States Court Of Appeals

For The Ninth Circuit

**GREGORIO D. TAITAGUE and  
HENRY BLAS BLAS,**

**Plaintiffs-Appellants,**

vs.

**FIRST ISLAND INDUSTRY, Inc., a Guam Corporation;  
CALVO'S INSURANCE UNDERWRITERS, INC., a Guam  
Corporation; OXFORD PROPERTIES AND FINANCE,  
LTD., a Hong Kong Corporation; The Estate of MARIA  
TORRES MARTINEZ Deceased, by Father VICENTE T.  
MARTINEZ, Administrator; and all other persons unknown  
(DOES I through V) claiming any right, title, estate, lien or  
interest in the real property described in the complaint adverse  
to Plaintiffs' ownership, or any cloud upon Plaintiffs' title  
thereto, Defendants-Appellees.**

No. 90-15217

D.C. No. CV-88-00047-CCD

**MEMORANDUM\***

**Appeal from the Appellate Division of the United States  
District Court for the District of Guam  
Duenas, Munson, and McDonald, District Judges, Presiding**

**Argued and Submitted May 10, 1991  
Honolulu, Hawaii**

**Before: SCHROEDER, FLETCHER and FERGUSON,  
Circuit Judges.**

**Plaintiffs-appellants Gregorio D. Taitague and Henry Blas Blas  
appeal the affirmance by the appellate division of the United**

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**\*This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as**

States district court of Guam of the Superior Court of Guam's judgment against them in an action to quiet title arising from a boundary dispute. They contend that the appellate division erred in finding that their suit was barred under Guam's land registration law. We have jurisdiction under 48 U.S.C. § 1424-3(c). We affirm.

### FACTS

This case concerns a dispute over the legal boundary between the property of the appellants and the appellees. It is uncontested that the Martinez property has been registered under Guam's Torrens Land Title Registration System since 1964. The Taitague property has never been registered, although the appellants have held record title to the land since 1936.

The parties all agree with the findings of fact prepared by the Superior Court of Guam and adopted by the appellate division as the basis for its decision. These facts are as follows:

The boundary dispute has as its origin Land Registration Case No. 32-64 (of which the Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as Estate 16 Lot "B" Dandan, Municipality of Inarajan, Territory of Guam. [In that action, the petitioners] did not list in their petition [nor] personally serve the plaintiffs' predecessor in interest, Baldovino Babauta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1157.4 and 1157.11. (Land Title Registration Act). Further, [the 1964 Untalan] survey map relied upon in Land Registration Case No. 32-64 incorrectly depicted the course of the Ugum River which has traditionally established the boundary between the Taitague and Martinez properties. [The disputed property in which the plaintiffs seek to quiet title is thus a portion of what had traditionally been considered the Taitague family estate lying just north of the Ugum River in the municipality of Talofofo. T]he largely uncontradicted testimony put forth by plaintiffs establishes that they have been in possession of

the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle . . . .

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd. sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc., transferred its interest to Oxford Properties and Finance Ltd. [All transfers of the Martinez property were made to bona fide purchasers and for value.] Each of the above grantees received a new Certificate of Title upon purchase of their respective interest. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs premise their present suit, was canceled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation.<sup>1</sup>

Superior Court of Guam, Decision and Order entered May 25, 1988, at 1-3 (bracketed alterations supplied by appellate division).

This action was originally instituted by the appellants' predecessor in interest, Baldovino Taitague, to quiet title to Lot 412, Municipal District of Talofoto, a portion of which is included within the bounds of Estate 16, Lot "B" Dandan. While the case was still before the trial court, Gregorio Taitague and Henry Blas Blas, Baldovino Taitague's son and grandson and successors in interest to the Taitague property, were substituted as plaintiffs. In

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<sup>1</sup>We note that the court's statement of facts contains an immaterial discrepancy. The court first states that the Martinezes sold the property in 1972 to James Lee & Co. and Calvo Finance Corp., but the last sentence of the quoted passage indicates the sale occurred in 1974. Whatever the correct date of the sale, it has no bearing on our decision in this appeal.

May 1988, the Superior Court of Guam found in favor of the defendants.

Taitague and Blas filed a motion asking the court to amend its findings to further clarify the proper boundary line between their property and that of the defendants. The court denied that motion. On Appeal to the Appellate Division of the United States District Court for the District of Guam, Taitague and Blas contended that the trial court had erred in its refusal to quiet title in the plaintiffs and in denying their motion for amendment of the judgment. The appellate division affirmed. Taitague and Blas timely appeal.

### STANDARD OF REVIEW

We review questions of law *de novo*, according "no deference to interpretations of local law by the Appellate Division of the District Court of Guam." *Guam v. Yang*, 850 F.2d 507, 511 (9th Cir. 1988) (en banc). A ruling on a motion to amend the judgment is reviewed for abuse of discretion. *Tranago, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1014 (9th Cir. 1985), *cert. denied*, 474 U.S. 1059 (1986).

### DISCUSSION

The dispute arises from an error in the survey map relied upon by the Martinezes in their original land registration petition. The boundary between the Martinez property and the Taitague property had been assumed to be the Ugum River. The Superior Court explicitly found that "it is evident that the course of the Ugum River as depicted on the 1964 Untalan survey map is incorrect." Because of this error, the description of the Martinez property included a portion of what had been assumed to be Taitague property. It is undisputed that the Martinezes did not serve notice on Baldovino Taitague of their land registration action as required by Guam Civil Code § 1157.11.

In 1933, Guam adopted the Land Title Registration Act establishing a Torrens title system for the territory. *Wells v. Lizama*, 396 F.2d 877, 877-78 (9th Cir. 1968). A Torrens title system is defined as:



A system for registration of land under which, upon the landowner's application, the court may, after appropriate proceedings, direct the issuance of a certificate of title. With exceptions, this certificate is conclusive as to applicant's estate in land.

*Black's Law Dictionary* (6th ed. 1990).

"[T]he right of a claimant in possession of the land is protected under most land title acts so far as the initial registration of the title is concerned unless he is given actual notice of the application and an opportunity to present his claim." *Wells*, 396 F.2d at 882 (quoting Annotation, 42 A.L.R.2d 1387, 1389 (1955)). If the Martinezes still owned the property, the error conceivably could be corrected, based on their failure to give notice to Baldovino Taitague of their land registration case as legally required. However, two subsequent transfers of the property have taken place since the original certificate of title was issued.

The Guam Land Registration Act is specifically designed to provide broad protection to subsequent bona fide purchasers for value. For example, a good faith subsequent purchaser is not required to look into the circumstances of the original, or previous, registration, or to have any notice, actual or constructive, of any adverse interest or claim. Guam Civ. Code § 1157.35 (now 21 Guam Code Ann. § 29137 (1989)). A subsequent bona fide purchaser for value holds her title against claims of fraud in the original registration or against claims that any previous registration was void. Guam Civ. Code §§ 1157.36, 1157.37 (21 Guam Code Ann. §§ 29138, 29139). The Act also provides that no unregistered owner shall prevail in a claim against the title of a registered owner who bona fide purchased the property for value. Guam Civ. Code § 1157.38 (21 Guam Code Ann. § 29140). Finally, once land has been registered and a certificate of title issued, no one may claim possession of the land by adverse possession. Guam Civ. Code § 1157.34 (21 Guam Code Ann. § 39136).

Taitague and Blas contend that the California Supreme Court's decision in *Follette v. Pacific Light & Power Corp.*, 189 Cal. 193, 208 P. 295 (1922), creates an exception to this otherwise impenetrable title of a subsequent bona fide purchaser for value. We need

not decide this issue, however, because we conclude that their claim is time barred. *See Golden Nugget, Inc. v. American Stock Exchange, Inc.*, 828 F.2d 586, 590 (9th Cir. 1987) (court of appeals may affirm on alternative legal basis adequately supported in record).

Although Baldovino Taitague did not receive notice of the conflicting land claim at the time of original registration in 1964, he received actual notice of the conflicting claim at least as early as October 1975, when he obtained the results of a survey of his property that he himself had authorized. The map produced by this survey, signed and dated by Baldovino Taitague in October 1975,<sup>2</sup> clearly shows a large portion of Taitague's property on his side of the Ugum River as included in Lot "B" Dandan, the lot registered to Martinez. In addition, a "SPECIAL NOTES" section on the map states that " 'PORTIONS OF LOT 412 [Taitague's property] WITHIN LOT B DANDAN' ARE SEPARATELY DESIGNATED TO INDICATE THAT THERE WERE ERRONEOUSLY INCLUDED WITHIN LOT NO 'B' WHEN IT WAS REGISTERED . . . ."

Under Guam's Land Title Registration Act, the limitations period is "one (1) year following the first registration, providing said first registration is not void for any of the reasons set forth in § 37 of this Act." Guam Civ. Code § 1157.44 (now 21 Guam Code Ann. § 29146 (1989)). Section 37 provides that registrations that have been forged or executed by a person under legal disability are void. Guam Civ. Code § 1157.37 (21 Guam Code Ann. § 29139). Section 37 does not apply in the present case.

Taitague and Blas argue that the one-year statute of limitations set forth in the Act does not apply because the failure of defendants' predecessor in interest to serve notice on Baldovino Taitague in the original registration proceeding rendered the registration void. However, the Act does not specify that mistake

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<sup>2</sup>Though the date and Taitague's signature on the map are not discernible on the copy of the map in the record furnished to us, the surveyor who prepared the map did sign and date it October 1975. Appellants have not disputed the claim of First Island Industry that Taitague authorized the survey and signed the map.

in description or failure to provide notice to an adjacent landowner are bases for voiding a registration. One provision of the Act preserves the rights and remedies of a *defrauded* party, but even that provision also notes that an action for fraud cannot "affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him." Guam Civ. Code § 1157.36 (21 Guam Code Ann. § 29138). Nothing in the Act authorizes a party who did not receive the required notice at the time of original registration, such as Taitague, to bring an action against a subsequent good faith purchaser to void the registration. More importantly, the statute of limitations does not contain any exception for such an action.

We recognize that Torrens act title registrations in Guam and California<sup>3</sup> have ~~not~~ been set aside where notice was not served on an affected party. *See Francisco v. Look*, 537 F.2d 379 (9th Cir. 1976) (Guam); *Follette v. Pacific Light & Power Corp.*, 189 Cal. 193, 208 P. 295 (1922); *Swartzbaugh v. Sargent*, 30 Cal. App. 2d 467, 86 P.2d 895 (Cal. Ct. App. 1939). However, the case before us is different. In each of the cited cases the aggrieved parties acted soon enough after receiving notice of the adverse registration decree that their claims were not barred by any statute of limitations. In this case, even if we were to hold that the statute of limitations could be tolled equitably until Taitague had actual or constructive notice of the adverse registration decree, Taitague's claim still would be time-barred. Taitague's receipt of the survey map showing the conflicting claim put him on notice at least as early as October 1975. Even were we to apply equitable tolling, the statute of limitations period would have commenced to run at that time. Taitague waited over three years to commence this action; the limitations period therefore expired well before he filed his complaint in February 1979.

The appellants also contend that the appellate division erred in affirming the Superior Court's denial of their motion for amend-

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<sup>3</sup>California law is especially relevant because Guam's Land Title Registration Act essentially was adopted from California's land title registration law in 1933. *See Wells*, 396 F.2d at 881 n.3.

ment of the judgment. Their motion asked the court to find that the boundary between the two properties was the Ugum River rather than the line depicted on the land registration certificate. The appellate division correctly found that Taitague and Blas were trying to achieve the same result they sought in their quiet title action through different means. We agree with the appellate division that the Superior Court did not abuse its discretion in denying the motion to amend.

AFFIRMED.

**Appendix B**

**IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM  
APPELLATE DIVISION**

Gregorio D. Taitague, et al.,  
Plaintiffs/Appellants,

v.

First Island Industry Inc., et al.,  
Defendants/Appellees.

[Filed January 28, 1990]  
Civil Case No. 88-00047A  
S.C. Civ. Case No. 0130-79

**OPINION**

Attorney for Appellants:	Paul A. Lawlor Moore, Ching, Boertzel & Lawlor Suite 400, GCIC Building 414 West Soledad Avenue Agana, Guam 96910
Attorney for Appellee: First Island Industry Inc.:	Anita Arriola Arriola, Cowan & Bordello P.O. Box X Agana, Guam 96910
Attorney for Appellee: Calve's Insurance Underwriters, Inc.:	Lawrence J. Taker Gayle & Teker Second Floor Agana Bay Building 220 East Marine Drive Agana, Guam 96910
Attorney for Appellee: Oxford Properties and Finance Co., Ltd.:	Douglas F. Cushnie P.O. Bos 949 Saipan, MD 96950

BEFORE: DORMAS, Senior Judge,  
MUNSON<sup>1</sup> and McDONALD<sup>2</sup>, District Judges

McDonald, District Judge:

The plaintiffs appeal from a proceeding in which they unsuccessfully sought to have title to Lot 412, Municipal District of Talofofo, quieted in their name. Finding no error, we affirm.

I.

The factual findings of the trial court, which are controverted by neither the appellants nor the appellees, aptly set forth the facts as are relevant to this appeal, and accordingly are adopted as our own:

This boundary dispute has as its origin Land Registration Case No. 32-64 (of which the Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as (Estate) is Lot "B" Dandan, Municipality of Inarajan, Territory of Guam. [In that action, the petitioners] did not list in their petition [nor] personally serve the plaintiffs' predecessor in interest, Baldovino Babanta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1187.d and 1157.11. (Land Title Registration Act). Further, [the 1964 Untalan] survey map relied upon in Land Registration Case No. 33-64 incorrectly depicted the course of the Ugum River which had traditionally established the boundary between the Taitague and Martinez properties. [The (disputed) property in which the plaintiffs seek to quiet title is thus a portion of what had traditionally been considered the Taitague family estate lying just north of the Ugum River in the Municipality of Talofofo. The largely uncontradicted testimony put forth by plaintiffs

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<sup>1</sup>The Honorable Alex R. Munson, United States District Court for the Northern Mariana Islands, sitting by designation.

<sup>2</sup>The Honorable Alan A. McDonald, United States District Court for the Eastern District of Washington, sitting by designation.

establishes that they have been in possession of the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle . . .

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd. sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc. transferred its interest to Oxford Properties and Finance Ltd. [All transfers of the Martinez property were made to bona fide purchasers and for value.] Each of the above grantees received a new Certificate of Title upon purchase of their respective interests. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs promise their present suit, was cancelled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation.

Decision and Order entered May 25, 1988 (95) 1-3.

The present action was commenced on February 23, 1979 by the plaintiffs-appellants' predecessor in interest, Baldovino Taitague, to quiet title to Lot 412, Municipal District of Talofofo, a portion of which is included within the bounds of Estate 16, Lot "B" Bandan. Named as defendants were First Island Industry, Inc., Calvo's Insurance Underwriters, Inc.; Oxford Properties and Finance, Ltd.; the Estate of Maria Torres Martinez; and all other persons unknown. At some later point in the proceedings, Gregorio Taitague and Henry Blas Blas, Baldovino Taitague's son and grandson and successors in interest to the Taitague property, were substituted as plaintiffs.

The action was tried before the court on May 17 and 18, 1988. By a Decision and Order entered May 25, 1988, the trial court held in favor of the defendants. On June 13, 1988, the plaintiffs



filed a Motion to Amend or to Make Additional Findings to the court's May 25, 1988 Decision and Order, in which they sought further clarification of the proper boundary line between the plaintiffs' and the defendants-in-possession's property. The trial court declined to amend its original Decision and Order, or to make any additional findings thereto, by a Decision and Order entered July 12, 1988. A final Judgment was then entered on August 8, 1988.

## II.

Viewing the appellants' argument as a whole, we find before us two broad issues for review. First, we must determine whether the trial court erred in returning to quiet title to Lot 412 in the name of the appellants where the appellants' predecessor was neither made a party to nor served with notice in the original Estate 16, Lot "B" registration action, but where the disputed portion of Lot 412 is registered in the name of subsequent bona fide purchasers for value. And second, we must determine whether the trial court erred in declining to amend or to make additional findings to its original Decision and Order as to the proper boundary line between the appellants' claimed property and the appellees' registered property. As we regard both of these issues as issues of law, we review each *de nove*. *In re Brown*, 743 F.2d 664 (9th Cir. 1964).

### A.

Under Guam's Land Title Registration Act, a properly issued certificate of title in the name of a subsequent bona fide purchaser for value is irrebuttably presumed to be evidence of ownership; *see, e.g.*, Guam Civ. Code § 1157.36 ("nothing contained in this section shall affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him"); § 1157.37 ("the title of the registered owner, who has taken bona fide for a valuable consideration, shall not be affected by reason of his claiming title through someone, the registration of whose right of interest was void"); § 1157.38 ("No unregistered estate . . . shall prevail against the



title of a registered owner taking bona fide for a valuable consideration or of any person bona fide claiming through or under him"); § 1157.40 ("In any action or proceeding brought for . . . possession of land, the certificate shall be held in every court to be conclusive evidence . . . that such registered owner has a good and valid title to the land"). *Nelle v. Lisage*, 396 F.2d 877 (9th Cir. 1969). Thus:

Although the right of a claimant in possession of the land is protected under most land title note so far as the initial registration of the title is concerned unless he is given actual notice of the application and an opportunity to present his claim, a purchaser for value and in good faith may acquire a good title in reliance upon the certificate of title regardless of the fact that someone in actual possession of the land may present an adverse claim.

*Nelle*, 396 F.2d at 282 (quoting 42 A.L.R. 2d 1287, 1389 (1955)). Such an interpretation of the Registration Act is essential if its ultimate purpose is to be fulfilled, which is "to establish an indefeasible title free from any and all rights or claims not registered with the registrar of titles, . . . to the and that anyone may deal with such property with the assurance that the only rights or claims of which he need take notice are those registered." *United States v. Byan*, 124 F.Supp 1, § (B. Minn. 1964) (interpreting Minnesota's Registration Act). As the trial court found the appellees named as the registered owners of the disputed property to be subsequent bona fide purchasers for value, it is committed no error in denying title in Lot 412 in the appellants.

## B.

Rule 52(b) of the Rules of Civil Procedure for the Superior Court of Guam States in part that "[u]pon motion . . . the court may amend its findings or make additional findings and may amend the judgment accordingly." The appellants, in seeking additional findings, made no challenge to the sufficiency of the evidence used to support those findings already made. The trial court's decision whether to make additional findings or to recon-

sider was thus clearly a discretionary one, and accordingly is one which will not be overturned absent an abuse of discretion.

Upon review of the record, we find that the trial court, in its Decision and Order affected May 23, 1988, adequately addressed each of the contentions raised by the appellants in their complaint when it stated at 4-5 that "the Certificate of Title currently possessed by defendants Calvo's Insurance Underwriters, Inc., and Oxford Properties and Finance, Ltd., is held to be immune from the claims the Taitagues are prosecuting herein." Implicit in this holding was a finding that that portion of Lot 422 entitled to the appellees as the registered owners was that portion described in their certificates. The trial court committed no error in refusing to make additional findings in a decision which was complete on its face.

The same holds true when we view the appellants' action as a motion for reconsideration. While the appellants purported to acknowledge, in their words, the trial court's ruling "relative to the efficacy of the Torrens System," they effectively attempted to circumvent that decision by challenging, without presenting any new facts, the legal description of the land found in the appellees' certificates of title. This they cannot do. "A party who failed to prove his strongest case [at trial] is not entitled to a second opportunity by moving to amend a finding of fact or a conclusion of law." Wright & Miller, Federal Practice & Procedure: Civil § 2832 at 722 (1971). Here also we can find no error.

AFFIRMED.

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CRISTOBAL C. DUEÑAS  
Senior Judge

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ALEX R. MUNSON  
District Judge

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ALAN A. McDONALD  
District Judge

**Appendix C**

In The Superior Court Of Guam  
Territory Of Guam

**GREGORIO D. TAITAGUE, and  
HENRY BLAS BLAS,**

Plaintiffs,

vs.

**FIRST ISLAND INDUSTRY, Inc., a Guam  
Corporation, CALVO'S INSURANCE  
UNDERWRITERS, INC., a Guam Corporation,  
OXFORD PROPERTIES AND FINANCE, LTD.,  
a Hong Kong Corporation, The Estate of  
MARIA TORRES MARTINEZ, deceased,  
by FATHER VICENTE T. MARTINEZ,  
Administrator, and all other persons  
unknown (DOES I through V) claiming  
any right, title, estate, lien or  
interest in the real property  
described in the complaint adverse to  
plaintiffs' ownership, or any cloud  
upon plaintiffs' title thereto,  
Defendants.**

[ Filed May 25, 1988 ]

**DECISION AND ORDER**

This action to quiet title came before the Court for trial on 17 and 18 May 1988. Paul A. Lawlor and Mikel W. Schwab appeared on behalf of plaintiffs Gregorio D. Taitague and Henry Blas Blas; Mark E. Cowan represented defendant First Island Industry, Inc.; Lawrence J. Teker represented defendant Calvo's Insurance Underwriters, Inc.; Douglas F. Cushnie represented defendant Oxford properties; and Fred E. Bordallo represented defendant Vicente T. Martinez, administrator for the estate of Maria T. Martinez.

This boundary dispute has as its origin Land Registration Case No. 32-64 (of which this Court takes judicial notice) in which Pedro and Maria T. Martinez petitioned the Island Court of Guam for the initial registration of title to one parcel of land designated as Estate 16 Lot "B" Dandan, Municipality of In-arajan, Territory of Guam. The plaintiffs allege that the petitioners in Land Registration Case No. 32-64 did not list in their petition and personally serve the plaintiffs' predecessor in interest, Baldovino Babauta Taitague, as an occupier of land and adjacent landowner pursuant to Guam Civil Code §§ 1157.4 and 1157.11. (Land Title Registration Act). Further, plaintiffs assert that the survey map relied upon in Land Registration Case No. 32-64 incorrectly depicted the course of the Ugum River which had traditionally established the boundary between the Taitague and Martinez properties. This error allegedly allowed Pedro and Maria T. Martinez to claim title to a substantial segment of the Taitague family estate located along the Ugum River in Talofolo. It is this segment of property along the Ugum River to which the plaintiffs presently seek to quiet title.

Based on the Court's viewing of the subject boundary and the testimony of land surveyor Thomas Anderson, it is evident that the course of the Ugum River as depicted on the 1964 Untalan survey map is incorrect. In addition, the largely uncontradicted testimony put forth by plaintiffs establishes that they have been in possession of the disputed property since the late 1930's. The Taitagues have maintained houses on the property as well as various farming activities. The Martinezes, prior to 1964, had never made a claim to this property and, in fact, had constructed a fence on the opposite side of the Ugum River from the Taitague land for the purpose of holding cattle. Finally, the petition filed in Land Registration Case No. 32-64 did not list Baldovino Taitague as either an occupant or adjacent landowner and the affidavits of service indicate that notice of the petition was not personally served on him.

The property registered by Pedro and Maria T. Martinez in Land Registration Case No. 32-64 was subsequently sold in January of 1972 to James S. Lee & Co. (Guam) Ltd. and Calvo Finance Corporation. In 1974 James S. Lee & Co. (Guam) Ltd.

sold its one-half undivided interest in the property to First Island Industry, Inc. Finally, in August of 1980, First Island Industry, Inc. transferred its interest to Oxford Properties and Finance Ltd. Each of the above grantees received a new Certificate of Title upon purchase of their respective interests. Thus, the Certificate of Title issued to Pedro and Maria T. Martinez, upon which plaintiffs premise their present suit, was cancelled in 1974 upon transfer of the property to James S. Lee & Company and Calvo Finance Corporation. *See*, Defendant's Exhibit A.

The defendants maintain that any potential defects in the initial registration proceeding cannot now be asserted against them since they are subsequent innocent purchasers for value of the initially registered property. Furthermore, the defendants argue that they are not relying on the initial Certificate of Title obtained by the Martinezes but, rather, on their own Certificates of Title issued to them upon the purchase of their respective interests in the property.

Plaintiffs argue, on the authority of *Follette v. Pacific Light & Power Corporation*, 189 Cal.193, 208 P. 295 (1922), that they may assert defects inherent in the initial title registration proceeding against the defendants in the present quiet title action. In *Follette*, the interest of an easement holder was omitted from an initial Torrens registration proceeding resulting in the issuance of a Certificate of Title which did not recognize the existence of the easement. The initial registrant sold the registered property to one Leo Gibbs who subsequently sold the property to the plaintiff Follette. Follette sued the holder of the easement in ejectment. The court held that as the easement holder had not received notice of the registration proceeding by personal service, the decree thereafter entered was obtained without due process of law. Further, the court held that the easement holder's possession of the registered property was constructive notice of his interest to subsequent purchasers of the property who relied on the original decree of registration.

The Ninth Circuit, in construing *Follette's* application to Guam, stated that:

Insofar as its effect on Guam Law is concerned, we take *Follette* as being limited to defects in an *original* Torrens Act

registration. Those jurisdictions which have passed upon the question have generally refused to extend the *Follette* principle to situations involving "subsequent" Torrens registrations (that is, registrations following one or more transfers of title).

*Wells v. Lizama*, 396 F.2d 877, 881 (9th Cir. 1968) (emphasis in original) (citations omitted). Having indicated in the above quoted material that *Follette's* application to Guam is to some degree "limited", the court further clarified its applicability in *Francisco v. Look*, 537 F.2d 379 (9th Cir. 1976). There the court stated that "[s]ince the instant case is an original Torrens Act registration, where no intervening innocent purchaser for value is involved, *Follette* is applicable to the extent that it permits reopening of the question of the validity of the registration." *Id.*, at 380. The converse of this statement must be accorded import. Thus, where an innocent purchaser for value has succeeded to the interest of the initial registrant, the *Follette* principle is not applicable.

Plaintiffs contend that the above quoted language from *Look* is merely "inartfully stated dicta." However, the finding by the Court in *Look* that there was not an intervening innocent purchaser for value was an essential premise to its application of the *Follette* principle. Hence, the above quoted language from *Look* is not merely dicta.

Because the present case involves subsequent innocent purchasers for value, *Follette* will not be applied to permit "reopening of the question of the validity of the registration." Accordingly, the Certificate of Title currently possessed by defendants Calvo's Insurance Underwriters, Inc., and Oxford Properties and Finance, Ltd., is held to be immune from the claims the Taitagues are prosecuting herein. The above constituted findings of fact and conclusions of law as required by Rule 52(a) of the Guam Rules of Civil Procedure.

SO ORDERED, this 25th day of May, 1988

JANET HEALY WEEKS

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Janet Healy Weeks, Judge  
Superior Court of Guam

**Appendix D**

United States Court Of Appeals  
For The Ninth Circuit

GREGORIO D. TAITAGUE, and  
HENRY BLAS BLAS,

Plaintiffs-Appellants,

vs.

FIRST ISLAND INDUSTRY, Inc., a Guam Corporation,  
CALVO'S INSURANCE UNDERWRITERS, INC.,  
a Guam Corporation,  
OXFORD PROPERTIES AND FINANCE, LTD.,  
a Hong Kong Corporation,  
The Estate of MARIA TORRES MARTINEZ, deceased,  
by FATHER VICENTE T. MARTINEZ,  
Administrator, and all other persons  
unknown (DOES I through V) claiming  
any right, title, estate, lien or  
interest in the real property  
described in the complaint adverse to  
Plaintiffs' ownership, or any cloud  
upon Plaintiffs' title thereto,  
Defendants-Appellees.

No. 90-15217

D.C No. CV-88-00047-CCD

**ORDER**

Before: SCHROEDER, FLETCHER AND FERGUSON,  
Circuit Judges.

The petition for rehearing is denied.